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15. Railroads (§ 94 (6)*)—Public Road—Change in Location—Compliance with Statute—Jurisdiction.—Where a railway company acted under a statute permitting it to change the location of a public road, if it made an equally convenient road, and to cross such road, and assumed to comply with its statutory duties, the court, although no contractual relation existed between the county and the railway, had jurisdiction to enforce the performance of such duty.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 272, 273; Dec. Dig. § 94 (6).* 4 Va.-W. Va. Enc. Dig. 125.]

16. Adverse Possession (§ 8 (2)*)—Property Subject—Highways.—Public highways belong to the state, and the statute of limitations does not run against the state nor bar the rights of the public therein.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 44-50; Dec. Dig. § 8 (2); Highways, Cent. Dig. § 280.* 1 Va.-W. Va. Enc. Dig. 221.]

17. Equity (§ 85*)—Laches—Parties Subject—State.—Public Highways belong to the state, and the doctrine of or defense of laches cannot be set up in a suit in equity by the board of county supervisors involving the rights in a public road.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 221; Dec. Dig. § 85.* 9 Va.-W. Va. Enc. Dig. 107.]

Appeal from Circuit Court, Tazewell County.

Suit in equity by the Board of Supervisors of Tazewell County against the Norfolk & Western Railway Company. From a decree dismissing the bill and from a decree refusing leave to file a bill of review, the Board of Supervisors appeals. Reversed in part, and affirmed in part, and case remanded.

H. Claude Pobst, J. W. Harmon, and J. N. Harmon, all of Tazewell, for appellant.
Graham & Hawthorne, of Tazewell, for appellee.

NEW RIVER, H. & W. R. CO. v. HONAKER et al.

Sept. 11, 1916.

[89 S. E. 960.]

1. Eminent Domain (§ 237 (4)*)—Assessment—Misconduct of Commissioners—Invalidity.—In a proceeding to condemn land for a railroad right of way where the commissioners to assess damages were entertained by one of the successful parties during their investigation, their award will be set aside, without regard to any actual influence on their award.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 610; Dec. Dig. § 237 (4).* 5 Va.-W. Va. Enc. Dig. 109.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digest and Indexes.

2. Eminent Domain (§ 133*)—Proceedings—Pending Appeal—Voidable Judgment—Lawful Entry.—In a proceeding to condemn a railroad right of way, where the company had proceeded in conformity with the statute (Acts 1902-04, c. 608; Code 1904, § 1105f, subsecs. 4-13), as far as jurisdictional matters were involved, the judgment confirming the commissioners' assessment of damages, pending a writ of error and before the judgment was reviewed and reversed by the Court of Appeals, was not void, but was voidable only, so that the entry after payment of damages was an entry as of legal right, and not an entry by a trespasser.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 358-361½; Dec. Dig. § 133.* 5 Va.-W. Va. Enc. Dig. 88.]

3. Eminent Domain (§ 192*)—Proceedings—"Jurisdiction."—The defendant's plea, putting in issue the allegation of the petition that the company was desirous of acquiring the fee-simple estate in and the title to the strip sought to be condemned, vested the court with power to hear the evidence and decide such issue; "jurisdiction" being the power to hear and determine a cause.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 519-521; Dec. Dig. § 192.* 5 Va.-W. Va. Enc. Dig. 101.]

For other definitions, see Words and Phrases, First and Second Series, Jurisdiction.]

4. Eminent Domain (§ 133*)—Proceedings—Damages—Improvements.—The court did not err in refusing to make the petitioner on a second condemnation proceeding, pay the added value of the land due to the improvements placed thereon by it after a judgment confirming the commissioners' award of damages, and after its payment of damages and entry, and before that judgment had been reviewed and reversed on writ of error.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 358-361½; Dec. Dig. § 133.* 5 Va.-W. Va. Enc. Dig. 88.]

5. Constitutional Law (§ 315*)—Due Process of Law—Taking of Property.—Where the judgment confirming the commissioners' award, and under which the railroad paid damages, entered and made improvements, was not void, but voidable merely pending a writ of error and reversal, the action of the court below in refusing to, on the filing of a second condemnation proceeding, make the railroad pay the added value of the land due to the improvements did not deprive the owners of their property without due process of law, in violation of Const. U. S. art. 14, § 1.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 935, 937, 941, 947; Dec. Dig. § 315.* 3 Va.-W. Va. Enc. Dig. 207.]

Error to Circuit Court, Bland County.

Condemnation proceedings by the New River, Holston &

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digest and Indexes.

Western Railroad Company against J. D. Honaker and others. Judgment for defendants, confirming an award of commissioners, and petitioner brings error, and defendants except and assign cross-errors. Reversed and remanded.

White, Penn & Penn of Abingdon, *Jackson & Henson*, of Roanoke, and *Williams & Farrier*, of Pearisburg, for plaintiff in error.

Williams & Williams, of Wytheville, and *J. Powell Royall*, of Tazewell, for defendants in error.

EUREKA LAND CO. *v.* WATTS.

Sept. 11, 1916.

[89 S. E. 968.]

1. Easements (§ 48 (6)*)—Implication—Implied Reservation—Way of Necessity.—Where for many years prior to the conveyance of part of a tract of land, the vendor and her predecessors had used a certain way without substantial deviation, the purchaser, on platting the tract into city lots, could not cut off such way and arbitrarily require the vendor to use an alley, but, on refusing her the use of regularly platted streets, was obliged to maintain the old way.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 103, 107; Dec. Dig. § 48 (6).* 4 Va.-W. Va. Enc. Dig. 861.]

2. Easements (§ 48 (3)*)—Implication—Implied Reservation.—When a right of way is reserved over a tract of land without any designation of the location, if there be in fact at the time of the reservation a well-defined road over the land which is in actual use by the persons in whose favor the right is reserved, the way in use will be treated as the one which the parties contemplated.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 103, 104; Dec. Dig. § 48 (3).* 4 Va.-W. Va. Enc. Dig. 861.]

3. Easements (§ 48 (2)*)—Implication—Implied Reservation—Way of Necessity.—If there is no way in use at time of sale of land, the owner of the servient estate may fix the location of a way of necessity, with due regard to the terms of the conveyance.

[Ed. Note.—For other cases, see Easements, Cent. Dig. § 103; Dec. Dig. § 48 (2).* 4 Va.-W. Va. Enc. Dig. 861.]

4. Easements (§ 48 (2)*)—Implication—Implied Reservation—Way of Necessity.—When, at the time of the conveyance, no way is in use and the servient owner fails to locate the way, the owner of the dominant estate may adopt his own route, and a subsequent une-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.